

CITY OF BANGOR

PROCUREMENT
POLICY

as adapted

from

The Model Procurement Ordinance
for Local Governments

By

The American Bar Association

in cooperation with

The National Institute of Governmental
Purchasing

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ARTICLE 1 GENERAL PROVISIONS

Part A - Purpose and Application

1-101 Purpose.

The Purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City of Bangor, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

This policy is also intended to ensure that City of Bangor complies with Federal Transit Administration (FTA) standards to ensure full and open competition consistent with:

- FTA Circular 4220.1F "Third Party Contracting Guidance" or latest version thereof;
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (referred to now as the "Super Circular" and which replaced and consolidated OMB Circulars A-87, A-102, A-110, A-122, and A-133);
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 1201, which replaces 49 CFR parts 18 and 19

Purchases made with any FTA funds for the transit program must follow the specific FTA requirements as outlined in this Policy. Purchases made with local funds only and for purposes other than transit may follow the City of Bangor's requirements.

1-102 Application.

1. This Policy applies to contracts for the procurement of supplies, services, and construction, entered into by the City of Bangor after the effective date of this Policy, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every City of Bangor expenditure irrespective of the source of the funds. When the procurement involves the expenditure of Federal assistance or contract funds, such as with the Federal Transit Administration and Community Development Block Grant Program (See Article 14), the procurement shall be conducted in accordance with any mandatory applicable Federal law and regulations. Nothing in this Policy shall prevent any City department from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
2. Prohibited Practices for FTA Funded Procurements:
Solicitations with requirements that contain features that unduly restrict competition may not be used. City of Bangor shall not:
 - Impose unreasonable business requirements for bidders or offerors.
 - Impose unnecessary experience requirements for bidders and offerors.
 - Use prequalification procedures that are restrictive of competition.

- Make a noncompetitive award to any person or firm on a retainer contract with City of Bangor, if that award is not for the property or services specified for delivery under the retainer contract.
- Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
- Specify only a "brand name" product without allowing offers of an "equal" product, or allowing an "equal" product without listing the salient characteristics that the "equal" product must meet to be acceptable for award.
- Specify in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to City of Bangor is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- Engage in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
 - Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to City of Bangor due to other activities, relationships, contracts, or circumstances.
 - Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- Take any arbitrary action in the procurement process.
- Use tag-ons where work is added that is beyond the scope of the original contract.

Part B - Definitions

1-201 Definitions.

- (1) Architect, Engineer and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Maine.
- (2) Brand Name or Equal Specification. A specification limited to one or more items by manufacturers' names or model numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the City of Bangor's requirements, and which provides for the submission of equivalent products.
- (3) Brand Name Specification. A specification limited to one or more items by manufacturers' names or model numbers.
Brand Name Requirement for FTA Funded Procurements:

If used, salient characteristics must be listed so that alternatives can be proposed under Federally funded procurements.

- (4) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (5) Change Order. A written order signed by the City Manager, authorizing the contractor to make changes.
- (6) Contract Modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (7) Construction. The process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (8) Contract. All types of City of Bangor agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.
- (9) Contractor. Any person having a contract with the City of Bangor or a using agency thereof.
- (10) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed, including profits.
- (11) Employee. An individual drawing a salary or wages from the City of Bangor, whether elected or not; any noncompensated individual performing personal services for the City or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the City; and any noncompensated individual serving as an elected official of the City.
- (12) Financial Interest.
 - (a) Direct or indirect ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$500 per year, or its equivalent;
 - (b) Direct or indirect ownership of 10% of any property or business to include 10% of the stock of a private corporation; or
 - (c) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

- (13) Person(s). Any business, individual, union, committee, club, other organization, or group of individuals.
- (14) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- (15) Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
- (16) Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (17) Request for Bids (Sealed Bids). All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (18) Request for Proposals/Qualifications. All documents, whether attached or incorporated by reference, utilized for soliciting proposals/qualifications.
- (19) Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
- (20) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the request for bids.
- (21) Services. The furnishing of labor, time, or effect by a contractor, not involving the delivery of a specific product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- (22) Specifications. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (23) Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Part C - Public Access to Procurement Information

1-301 Public Access to Procurement Information.

Procurement information shall be a public record to the extent provided in 1 MRSA Section 401 et. seq. and shall be available to the public as provided in such statute.

1-302 Authorization to Use Electronic Transmissions

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the City's applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

- (a) appropriate security to prevent unauthorized access to the bidding, approval and award processes; and
- (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

2-101 Establishment, Appointment, and Tenure.

- (1) Establishment of the Position of Purchasing Agent. There is hereby created the position of Purchasing Agent, who shall be the City's principal public purchasing official.
- (2) Appointment. The City Manager or his or her designee shall act as Purchasing Agent until or unless the City Council by ordinance shall provide for the appointment of a Purchasing Agent.
- (3) Tenure. The Purchasing Agent shall be appointed to serve an indefinite term and may be removed from office by the City Manager in accordance with City Policy.

2-102 Authority and Duties.

- (1) Principal Public Purchasing Official. Except as otherwise provided herein, the Purchasing Agent shall serve as the principal public purchasing official for the City, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Policy, as well as the management and disposal of supplies.
- (2) Authority. The Purchasing Agent shall have the authority to award bids and/or contracts where the value is \$75,000 or less under the following conditions:
 - (a) funding for the item or service has been approved in the current year budget; and
 - (b) the recommendation is to award to the low bidder; and
 - (c) the City has previous experience with the bidder; and

- (d) where vendors, staff, Councilors or members of the public have not expressed concern/or heightened interest in some form about the item bid or the bid process itself.

All bids or contracts awarded under this section shall be reported to the Finance Committee on a monthly basis.

- (3) Duties. In accordance with this Policy, and subject to the supervision of the City Manager, the Purchasing Agent shall:
 - (a) procure or supervise the procurement of all supplies, services, and construction needed by the City;
 - (b) sell, trade, or otherwise dispose of surplus supplies belonging to the City; and
 - (c) establish and maintain programs for specifications development, contract administration, inspection and acceptance, in cooperation with the departments using the supplies, services, and construction.
- (4) Operational Procedures. Consistent with this Policy, and with the approval of the City Manager, the Purchasing Agent may adopt operational procedures relating to the execution of his/her duties.

2-103 Delegations to Other City Officials.

With the approval of the City Manager, the Purchasing Agent may delegate authority to purchase certain supplies, services, or construction items or used vehicles and equipment to other City officials, if such delegation is deemed necessary for the effective procurement of those items. Procurement guidelines may be waived for the purchase of used vehicles or equipment after coordination with the Purchasing Agent. Written documentation consistent with purchasing guidelines must be available for all such purchases. Purchases of used vehicles or equipment in excess of \$25,000 must be reported to the Finance Committee.

ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION

Part A - Methods of Source Selection

3-101 Competitive Sealed Bidding.

- (1) Conditions for Use. All contracts of the City shall be awarded by competitive sealed bidding except as otherwise provided in Sections 3-102 (Request for Proposals/Qualifications), 3-103 (Contracting for Designated Professional Services), 3-104 (Purchases), 3-105 (Sole Source Procurement), and 3-106 (Emergency Procurements).

(2) FTA Requirements for Sealed Bids:

The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids, is lowest in price. The vehicle through which bids are solicited is an Invitation for Bids (IFB). The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted.

(a) When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services that, including construction services, cost greater than \$250,000. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:

- (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
- (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
- (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.
- (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
- (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

(b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:

- (1) Publicity – The Invitation for Bids must be publicly advertised.
 - i. The Director of Finance shall ensure that sufficient time is allowed to prepare bids before the date of bid opening.
 - ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
 - a. Direct notice, based on compiled vendor lists or from pre-qualification list, sent to prospective offerors; or
 - b. Use of advertisement by electronic means.
- (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
- (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.

- (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
 - (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
 - (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
 - (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.
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- (3) Request for Bids. A request for bids shall include specifications, and all contractual terms and conditions applicable to the procurement.
 - (4) Public Notice. A public notice of the request for bids shall be given no less than seven (7) calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation or posting on the City's website. The public notice shall state the place, date, and time of bid opening.
 - (5) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the request for bids. The amount of each bid, and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with Section 1-301 (Public Access to Procurement Information).
 - (6) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alterations or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the request for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The request for bids shall set forth the evaluation criteria to be used. No criteria should be used in bid evaluation that are not set forth in the request for bids.
 - (7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or electronic notice received in the office designated in the request for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening changes in bid prices may only be allowed if the bid price was based on incorrect information provided by the City. No other changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be

permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- (a) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - (b) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent.
- (8) Award. The contract shall be awarded with reasonable promptness by appropriate notice to the bidder whose bid best meets the requirements and criteria set forth in the request for bids. In the event the bid for a construction project exceeds available funds as certified by the Finance Director, does not exceed such funds by more than five (5) percent, the Purchasing Agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the request for bids.
- (9) Multi-Step Sealed Bidding. When it is considered impractical to prepare initially a purchase description to support an award based on identified criteria, a request for bids may be issued requesting the submission of unpriced offers to be followed by a request for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

3-102 Request for Proposals/Qualifications.

- (1) Conditions for Use. When the Purchasing Agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by use of a request for proposals/qualifications.
- (2) Conditions for FTA Funded Procurements:
When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than \$250,000 when the nature of the procurement does not lend itself to sealed bidding and City of Bangor expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement may not be used for the procurement of construction services, unless it is a Design-Build Procurement. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:
 - (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for

discussions or the importance of basing contract award on factors other than price alone are present.

- (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
 - (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
 - (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.
- (3) Public Notice. Adequate public notice of the request for proposals/qualifications shall be given in the same manner as provided in Section 3-101(3) (Competitive Sealed Bidding, Public Notice).
 - (4) Evaluation Factors. The request for proposals/qualifications should include all evaluation factors and selection criteria that will be used in the evaluation process. All evaluation factors cited in the request shall be considered equal unless the relative importance of such factors is so noted or assigned to each factor listed in the request for proposal/qualifications.
 - (5) Discussion with Responsible Offerors and Revisions to Proposals/Qualifications. As provided in the request for proposals/qualifications, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.
 - (6) Award. Award shall be made to the responsible offeror whose proposal/qualification is determined to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals/qualifications. The contract file shall contain the basis on which the award is made.

3-103 Contracting for Designated Professional Services.

- (1) Procurement of Services. For the purpose of procuring the services of accountants, lawyers, appraisers, construction contract manager, architect, engineer, land surveyor or other professionals Section 3-102 (Request for Proposals/Qualifications) shall be used except as provided under Section 3-105 (Sole Source Procurement) or Section 3-106 (Emergency Procurement)

3-104 Revenue Contracts

- (1) FTA Requirements for Revenue Contracts:
City of Bangor may enter into a revenue contract with a third party to generate revenues in connection with a transit related activity, or to create business opportunities utilizing an

FTA funded asset. Any such said contract opportunity will follow competitive selection procedures and principles outlined herein.

3-105 Purchases.

- (1) General. Any contract costing less than \$25,000 may be made in accordance with the purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a purchase under this Section.
- (2) Purchases costing \$10,000 but less than \$25,000. In so far as it is practical, no less than three businesses shall be solicited to submit written quotations on vendor letterhead. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record. All pricing information shall be sent directly to the Purchasing Agent.
- (3) Purchases costing over \$1,000 but less than \$10,000. The Purchasing Agent shall adopt operational procedures for making purchases of \$1,000 - \$10,000. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service, or construction being purchased; further, such operational procedures shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended, and facilitate an audit of the purchase made.
- (4) Purchases costing up to \$1,000. Purchases of up to \$1,000 may use a single selection, after contact, based on reasonable price, stock availability and delivery requirements.
- (5) Purchase Thresholds for FTA Funded Procurements:
Requirements applicable to micro-purchases (\$10,000 or less):
 - (1) Competition not required,
 - (2) Must document determination that price is fair and reasonable and how the determination was derived,
 - (3) Prohibit splitting of procurements to avoid competition, and
 - (4) When competition is not obtained, require equitable distribution among qualified suppliers.

Requirements applicable to small purchase threshold (from \$10,000 to \$250,000):

- (1) Must obtain price or rate quotations from an adequate number of qualified sources, and
- (2) Document file that price is fair and reasonable.

Required Competition

Price or rate quotations must be obtained from an adequate number of qualified sources. It is the responsibility of City of Bangor to ensure that an adequate number of quotations, bids, or proposals are received.

Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBE, small and minority firms and women's business enterprises in City of Bangor Federally-assisted procurements.

Documentation

Every small purchase must be documented in the grantee's written procurement history file. Contracts above the small purchase threshold must contain remedies for breach of contract. Contracts in excess of \$25,000 must have termination for cause and termination for convenience provisions.

Requirements applicable for large purchase greater than \$250,000:

Definition: Large purchases are those purchases of products and services that cost greater than Formal Threshold or the Federal threshold of \$250,000.

Large purchases must be made through the formal methods found in other sections of this policy. See, e.g., sections 3-101, 3-106.

City of Bangor reserves the right to use formal purchase methods instead of the micro-purchase or small purchase methods described herein, even if small purchase thresholds are met, if the Director of Finance believes it is in the best interests of the City of Bangor to do so.

3-106 Sole Source Procurement.

- (1) A contract may be awarded without competition when the Finance Committee determines after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Purchasing Agent or respective department head shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification of each contract file.
- (2) Sole Source Requirements for FTA Funded Procurements: *Note: Change Orders beyond the scope of the contract are treated as Sole Source Procurements
When City of Bangor requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, City of Bangor may make a sole source award with the prior approval of FTA or if otherwise allowed by the conditions below. Note that while the City of Bangor may contact FTA for prior approval, this approval is not required. In addition, when City of Bangor requires an existing

contractor to make a change to its contract that is beyond the scope of that contract, City of Bangor has made a sole source award that must be justified. Sole source awards are only appropriate when one of the following conditions apply:

(a) Unique Capability or Availability – The products or services are available from a single source if one of the conditions described below is present:

- (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to City of Bangor only from one source and has not in the past been available to City of Bangor from another source.
- (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
- (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling City of Bangor needs.

(b) Procurement by noncompetitive negotiation may be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances exists:

- The item is available only from a single source;
- A public urgency or emergency for the item exists which will not permit a delay resulting from competitive solicitation;
- FTA authorizes noncompetitive negotiations;
- After solicitation of a number of sources, competition is determined inadequate; or
- The item is an associated capital maintenance item as defined in 49 USC 5307(a)(1) et seq. that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify that such manufacturer or supplier is the only source for the item and the price of the item is no higher than the price paid for item by like customers; and
- Cost analysis, *i.e.*, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of cost and profit, is required.

(c) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, City of Bangor should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

- (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond City of Bangor control.
 - (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within City of Bangor control.
- (d) Unusual and Compelling Urgency – City of Bangor may limit the number of sources from which it solicits bids or proposals when City of Bangor has such an unusual and urgent need for the products or services that City of Bangor would be seriously injured unless it were permitted to limit the solicitation. City of Bangor may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.
- (e) Authorized by FTA – City of Bangor may request permission from FTA to allow it to use noncompetitive proposals for a particular procurement.
- (f) Procurement Procedures – The following requirements apply when City of Bangor completes a procurement utilizing less than full and open competition:
- (1) Potential Sources – City of Bangor must solicit offers from as many potential sources as is practicable under the circumstances.
 - (2) Sole Source Justification – City of Bangor must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why a sole source procurement is appropriate, state which of the authorized justifications listed in 3-106(a)-(e) are applicable, include a cost analysis and be signed by the Director of Finance. If City of Bangor decides to solicit an offer from only one source, City of Bangor must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in 3-106(a)-(e) are applicable to the sole source purchase.
 - (3) Cost Analysis – City of Bangor must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.

3-107 Emergency Procurements.

Notwithstanding any other provisions of this Policy, the Purchasing Agent may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification of the contract file.

3-108 Tie Bids.

Tie bids shall be resolved by the drawing of lots or the flip of a coin. Such tie breaking procedures shall be performed by the Purchasing Agent in the presence of one or more witnesses and reported to the Finance Committee.

3-109 Cancellation of Request for Bids or Requests for Proposals/Qualifications.

A request for bids, a request for proposals/qualifications, or other solicitation may be canceled, or any or all bids or proposals/qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interest of the City. The reasons therefor shall be made part of the contract file.

Each solicitation issued by the City shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the City.

Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation of any future procurement of similar items.

Part B - Qualifications and Duties

3-201 Responsibility of Bidders and Offerors.

- (1) Determination of Nonresponsibility. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Purchasing Agent. Any grounds which would give the City the right to demand adequate assurance or due performance as to an awarded contract under 11 MRSA §2-609 shall be deemed adequate grounds for a determination of nonresponsibility under this section. The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.
- (2) Responsibility Determination Requirements for FTA Funded Procurements:
Before selecting a contractor for award, the recipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Documentation of Determination of Responsibility Form, see Appendix A, will be filled out by the City and shall include a SAM.GOV search. Supporting information shall be retained in the permanent history file associated with each procurement. See additional information in Section 6-105 regarding Debarment or Suspension.
- (3) Responsiveness Determination Requirements for FTA Funded Procurements:

The City of Bangor shall review all proposals for responsiveness, using the attached form as a guideline, Appendix A-1. This includes ensuring Proposer has included all required forms, including but not limited to, Lobbying Certifications and Disadvantaged Business Enterprises (DBE) forms. All forms shall be included in the procurement package and listed as part of the responsiveness checklist, referenced above.

3-202 Cost or Price Analysis.

- (1) A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Section 3-101 (Competitive Sealed Bidding).
- (2) Independent Cost Estimates for FTA Funded Procurements:
For every procurement over the micro-purchase threshold, City of Bangor shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals.
- (3) Cost or Price Analysis for FTA Funded Procurements:
City of Bangor shall perform a cost or price analysis in connection with every procurement action above the Federal small acquisition threshold, including contract modifications.

Price Analysis:

If City of Bangor determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

Cost Analysis:

City of Bangor must perform or obtain a cost analysis when:

- (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
- (b) When the offeror submits elements of the estimated cost.
- (c) When only a sole source is available, even if the procurement is a contract modification.
- (d) In the event of a change order.

City of Bangor must perform cost and profit analysis when adequate price competition is lacking.

3-203 Bid and Performance Bonds on Service Contracts.

Bid and performance bonds or other security may be requested for service contracts as the Purchasing Agent deems advisable to protect the City's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's financial or other responsibility.

3-204 Insurance on Supply or Service Contracts.

Comprehensive general liability, fire hazard, property damage, workers compensation or other insurance coverage may be required in connection with any City contract, when the

Purchasing Agent or City Solicitor deems such insurance is advisable to protect the City's interests. Any such insurance requirement shall be set forth in the solicitation. Insurance shall not be used as a substitute for a determination of the bidder or offeror's financial or other responsibility.

Part C - Types of Contracts and Contract Administration

3-301 Types of Contracts.

- (1) General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the City may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

- (2) Contract Type Requirement for FTA Funded Procurements:
Time and Materials Type Contracts may only be used:
 - (1) After a determination that no other type of contract is suitable, and
 - (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

- (3) Multi-Term Contracts.
 - (a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

 - (b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined:
 - (i) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (ii) that such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in the City's procurement.

 - (c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available

for such purposes.

(4) Multiple Source Contracting.

- (a) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the City's actual requirements is limited by the provision of Uniform Commercial Code, 11 MRSA §2-306(1).
- (b) Limitations on Use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, product compatibility, or to be in the City's best interest. Any multiple source award shall be made in accordance with the provision of Section 3-101 (Competitive Sealed Bidding), Section 3-102 (Request for Proposal/Qualification), Section 3-104 (Purchases), and Section 3-106 (Emergency Procurements), as applicable. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.
- (c) Contract and Solicitation Provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:
 - (i) the City shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and
 - (ii) the City shall reserve the right to take bids separately if the Purchasing Agent approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the City.
- (d) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the City shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.
- (e) Determination Required. The Purchasing Agent shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

3-302 Contract Clauses and Their Administration.

- (1) Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Agent, after consultation with the City Solicitor, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (a) the unilateral right of the City to order in writing changes in the work within the scope of the contract;

- (b) the unilateral right of the City to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (c) variations occurring between estimated quantities of work in contract and actual quantities;
 - (d) defective pricing;
 - (e) liquidated damages;
 - (f) specified excuses for delay or nonperformance;
 - (g) termination of the contract for default;
 - (h) termination of the contract in whole or in part for the convenience of the City;
 - (i) suspension of work on a construction project ordered by the City;
 - (j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - (i) when the contract is negotiated;
 - (ii) when the contractor provides the site or design; or
 - (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.
 - (k) the right of the City to require that the contract be performed in compliance with all applicable City ordinances, building codes, and State and Federal laws;
 - (l) specifying whether and under what conditions contract disputes may be subject to binding or non-binding arbitration; and
 - (m) specifying what law is applicable to resolution or contract disputes.
- (2) FTA Required Clauses for FTA Funded Procurements:
City of Bangor must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the grantees purchase document. It is the City of Bangor's responsibility to ensure that the provisions are included and followed. To do this, the City will use the program software tool provided by FTA (currently Procurement Pro at time of approval) to help track the process and ensure compliance.

If such requirements, clauses, and certifications were not included in the original purchase solicitation and contracts, due to an omission or a change in federal contract clause requirements, City of Bangor may request the vendor to append the required Federal clauses in the purchase order or other document that affects the City of Bangor procurement. When this method is used, City of Bangor shall obtain

Buy America certification before entering into the purchase order. This method cannot be used to circumvent FTA's Buy America requirements.

(3) Price Adjustments.

- a. Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways:
 - (i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (ii) by unit prices specified in the contract or subsequently agreed upon;
 - (iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 - (iv) in such other manner as the contracting parties may mutually agree; or
 - (v) in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the City, as accounted for in accordance with [reference to cost principles] and subject to the provision of Article 9 (Appeals and Remedies).
- b. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provision of Section 3-202 (Cost or Pricing Data).

(4) Standard Clauses and Their Modification. The Purchasing Agent, after consultation with the City Solicitor, may establish standard contract clauses for use in City contracts. If the Purchasing Agent establishes any standard clauses addressing the subjects set forth in Subsection (1) of this Section, such clauses may be varied provided that any variations are reviewed by the City Solicitor.

3-303 Change Orders

- (1) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not costs or pricing data was required in connection with the initial pricing of the contract.
- (2) Contract Changes for FTA Funded Procurements:
City of Bangor may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes significantly larger quantities, or options beyond the recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.
- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or “tag-on”. A change within the scope of the contract is not a cardinal change or “tag-on.”

3-304 Contract Administration.

- (1) Each department shall ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.
- (2) Contract Administration for FTA Funded Procurements:

- (a) City of Bangor Staff Responsibilities

- Prior to execution of third party contracts, City of Bangor shall designate a Project Manager to serve as City of Bangor principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary.

- (b) Period of Performance

- The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. City of Bangor will also consider competition, pricing, fairness, and public perception. City of Bangor procurement files will document its rationale for determining the performance period designated for each contract. City of Bangor third party contracts (such as property, services, leases, construction, revenue, and so forth) are limited to a maximum period of performance of five (5) years, unless the City justifies the business need or reason for establishing a longer term. City of Bangor may enter into a multi-year contract

to buy rolling stock with an option not exceeding five (5) years to buy additional rolling stock or replacement parts (49 U.S.C. § 5325(e)(1)). City of Bangor may not exercise that option later than five (5) years after the date of its original contract.

(c) Time Extensions

Consistent with the general tone of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once City of Bangor awards a third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification. The Director of Finance has the sole authority to approve and execute contract modifications. The Project Manager for the contract shall review all contract modifications as to whether additional time can be granted. The Project Manager shall prepare a written justification and cost analysis (if applicable) for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

(d) Advance Payments

Advance payments utilizing FTA funds are prohibited unless prior written concurrence is obtained from FTA.

(e) Progress Payments

Progress payments are payments for contract work that has not been completed. City of Bangor may use FTA assistance to support progress payments provided the City obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance. Applicable provisions of Circular 4220.1F requires that any progress payments for construction contracts be made on a percentage of completion method described therein. City of Bangor however, may not make progress payments for other than construction contracts based on this percentage method.

(f) Remedies

City of Bangor shall include provisions that address remedies in its third party contracts. Provisions related to remedies may include provisions for:

a. Liquidated Damages

City of Bangor may use liquidated damages if City of Bangor reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such

damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect City of Bangor costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account.

- b. Violation or Breach
Third party contracts exceeding \$250,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.
- c. Suspension of Work
City of Bangor may include provisions pertaining to suspension of work in its third party contracts.
- d. Termination
Termination for cause and termination for convenience provisions must be included in third party contracts exceeding \$25,000.

(g) Contents of Complete Contract Files

The following documents shall comprise the contents of a complete contract file for procurements above the micro-purchase level:

- a. Written Record of Procurement History
City of Bangor shall maintain written records detailing the history of the procurement for at least three years after the grant period concludes, including records relating to:
 - 1. Procurement Method
City of Bangor must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.
 - 2. Contract Type
City of Bangor must state the reasons for selecting the contract type it used.
 - 3. Contractor Selection
City of Bangor must state its reasons for contractor selection or rejection, including written justification and evaluation documents;
 - 4. Contractor Responsibility

City of Bangor must provide a written determination of responsibility for the successful contractor;

5. Cost or Price

City of Bangor must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis; and

6. Reasonable Documentation

City of Bangor must retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt and evaluation of offers, and contract award, negotiation and execution.

(h) Contract Administration and Close-Out Documents

City of Bangor shall maintain written records detailing the performance and close-out of the contract, including records relating to:

(i) Contractor Performance

City of Bangor must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions.

(j) Contract Deliverables

City of Bangor must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.

(k) Contract Changes

City of Bangor must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation and execution.

(l) Contract Payments

City of Bangor must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products.

(m) Contract Close-Out

City of Bangor must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to City of Bangor and contract audit and final reconciliation.

3-305 Right to Audit Records.

- (1) Audit of Cost or Pricing Data. The City may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to

Section 3-202 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, document, papers, and records that are pertinent to such cost or pricing data for three (3) years from the date of final payment under the contract.

- (2) Contract Audit. The City shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

3-306 Reporting of Anticompetitive Practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General and the City Solicitor.

3-307 City Procurement Records.

- (1) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file by the Purchasing Agent.
- (2) Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with State record retention guidelines.

NOTE: Records as to awarded contracts should be retained for at least six (6) years following final performance thereunder. Statute of limitations under 14 MRSA §751 et. seq. is 20 years for actions on contracts under seal and maximum ten (10) years for negligence of design professionals.

- (3) Rolling Stock Procedures. The City of Bangor will follow the attached procedure when conducting pre-award and post-delivery review and inspection of Revenue Service Rolling Stock, Appendix A-2.

ARTICLE 4 - SPECIFICATIONS

4-101 Maximum Practicable Competition.

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the City by architects, engineers, designers, and draftsmen.

4-102 Brand Name or Equal Specification.

- (1) Use. Brand name or equal specifications may be used when the Purchasing Agent determines that:
 - (a) no other design, performance specification or qualified product is available;
 - (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (c) the nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (d) use of a brand name or equal specification is in the City's best interests.
- (2) Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- (3) Required Characteristics. Unless the Purchasing Agent determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (4) Nonrestrictive Use of Brand or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

4-103 Brand Name Specification.

- (1) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Agent determines that only the identified brand name item or items will satisfy the City's needs.
- (2) Competition. The Purchasing Agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3-105 (Sole Source Procurement).

ARTICLE 5 - PROCUREMENT OF CONSTRUCTION, ARCHITECT, ENGINEER AND LAND SURVEYING SERVICES

Part A - Management of Construction Contracting

5-101 Responsibility for Selection of Methods of Construction Contracting Management.

- (1) The Purchasing Agent shall have the discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Purchasing Agent may consult with the City Engineer and shall consider the City's requirements, its resources, and the potential contractor's capabilities. If a method of construction contracting management other than a single prime contractor is selected, the Purchasing Agent shall include in the contract file a written statement setting forth the reasons for the alternate method of construction contracting management for that project.
- (2) Architectural and Engineering (A&E) Requirements for FTA Funded Procurements:
FTA's enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. § 1101 through 1104, to acquire A&E services.
 - (a) Qualifications-Based Procurement Procedures Required – City of Bangor must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include:
 - Program management;
 - Construction management;
 - Feasibility studies;
 - Preliminary engineering;
 - Design, architectural, engineering;
 - Surveying, mapping; and
 - Other related services.

The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

- (b) Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration or repair to real property.
- (c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:
 - (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.

- (2) Price – Price is excluded as an evaluation factor.
 - (3) Most Qualified – Negotiations are first conducted with only the most qualified offeror.
 - (4) Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.
- (3) FTA Funded Design-Build Procurements:
The City of Bangor must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in 4220.1F, VI, 3. h. when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in 4220.1F, VI, 3. f. Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in 4220.1F, VI, 3. f, unless required by State law adopted before August 10, 2005.
- (4) Prevailing Wages Requirements for FTA Funded Procurements (Davis Bacon):
Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction projects. City of Bangor will ensure that any third party contracts at any tier exceeding \$2,000 shall include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.*, and implementing DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction" (29 CFR Part 5). The Davis-Bacon Act requires contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. City of Bangor will include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and will condition contract award upon the acceptance of that wage determination.
- (5) Anti-Kickback Requirements for FTA Funded Procurements:
For all third party construction and repair contracts exceeding \$100,000, City of Bangor, shall require provisions for compliance with the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874, and implementing DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 CFR Part 3. The Act prohibits a contractor from inducing, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled. Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. § 3701(b)(3)(A)(iii), increased the threshold for construction and repair to \$100,000 from \$2,000 as set forth in the Super Circular, so that a federally assisted construction contract must exceed \$100,000 before these "Anti-Kickback" prohibitions apply to that contract.

Part B - Bid Security and Performance Bonds

5-201 Bid Security.

- (1) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated to exceed \$75,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of Maine, certified check, or otherwise supplied in a form satisfactory to the Purchasing Agent. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$75,000 when the circumstances warrant.
- (2) Amount of Bid Security. Bid security shall be an amount equal to at least 5% of the amount of the bid.
- (3) Rejection of Bids for Noncompliance with Bid Security Requirements. When the request for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.
- (4) Withdrawal of Bids. If a bidder is permitted to withdraw his/her bid before award as provided in Section 3-101(6) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be made against the bidder or the bid security.

5-202 Contract Performance and Payment Bonds.

- (1) When Required and Amounts. When a construction contract is awarded in excess of \$75,000, the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:
 - (a) a performance bond satisfactory to the City, executed by a surety company authorized to do business in the State of Maine or otherwise secured in a manner satisfactory to the City, in an amount to equal to 100% of the price specified in the contract; and
 - (b) a payment bond satisfactory to the City, executed by a surety company authorized to do business in the State of Maine or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.
- (2) Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.
- (3) Suits on Payment Bonds - Right to Institute. Unless otherwise authorized by law, any person who has furnished labor or materials to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this Section,

and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

- (4) Suits on Payment Bonds - Where and When Brought. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction in Penobscot County.
- (5) City of Bangor Subrogation Rights. The City of Bangor may reserve by contract the right to make payments directly to any supplier or subcontractor who shall not have received timely payment from the contractor for labor or materials provided to a City project.

In the event the City shall make such payments, it shall be deemed subrogated to the rights of the supplier or subcontractor concerned to the extent of the payments made, and may institute suit on any payment bond as provided above, the City's right to institute suit under this paragraph shall be in addition to the City's rights in regard to payment of contract funds to the contractor or to institute suit against the contractor for enforcement of any performance bond.

5-203 Copies of Bond Forms.

Any person may request and obtain from the City a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

5-204 Insurance Requirements

Where the Purchasing Agent has required liability or hazard insurance in accordance with section 3-204, the minimum coverage amount of such insurance shall be \$1,000,000 for comprehensive general liability coverage and the value of the City property affected for fire, hazard or property damage insurance. A higher coverage limit may be specified. The City shall be named as an additional insured on all such insurance policies, which shall be issued by an insurance company authorized and licensed to do business in the State of Maine.

Part C - Fiscal Responsibility

5-301 Contract Changes and Approval Process

Every contract modification, change order, or contract price adjustment under a construction contract with the City shall be subject to prior approval by the City Manager after receiving a report from the department head or other appropriate City official that the requested change is appropriate and that sufficient funds are available for the change.

5-302 Fiscal Responsibility.

Every contract modification, change order, or contract price adjustment in excess of \$250,000 under a construction contract with the City shall be subject to prior approval by the City Council after receiving a report from the appropriate City official as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

ARTICLE 6 - DEBARMENT OR SUSPENSION

6-101 Authority to Debar or Suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent, after consulting with the City Solicitor, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years.

After consultation with the City Solicitor, the Purchasing Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed one (1) year. The causes for debarment include:

- (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (b) conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honest which currently, seriously, and directly affects responsibility as a City contractor;
- (c) conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals;
- (d) Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to

perform or unsatisfactory performance caused by acts beyond the control of the contract shall not be considered to be a basis for debarment.

- (e) any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a City contractor including debarment by another governmental entity for any cause listed in this Policy; and
- (f) for violation of the ethical standards as set forth in Ethics in Public Contract, (See Chapter 33, City of Bangor Ordinance).

6-102 Decision to Debar or Suspend.

The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.

6-103 Notice of Decision.

A copy of the decision required by Section 6-102 (Decision to Debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person.

6-104 Finality of Decision.

A decision under Section 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the Board of Appeals or commences a timely action in court in accordance with applicable law.

6-105 Debarment and Suspension Requirements for FTA Funded Procurements.

Debarment and Suspension:

Debarment and suspension regulations and guidance include the following provisions.

DOT Debarment and Suspension Regulations:

U.S. Department of Transportation (DOT) regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount. See, 2 CFR Part 1200. City of Bangor shall apply DOT's debarment and suspension requirements to itself and each third party contractor at every tier to the extent required by DOT's regulations that incorporate the requirements of Office of Management and Budget (OMB), "Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180.

System for Award Management:

The System for Award Management (SAM) combines federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. SAM includes the functionality from the following systems:

- Central Contractor Registry (CCR)
- Federal Agency Registration (Fedreg)
- Online Representations and Certifications Application
- Excluded Parties List System (EPLS)

At its discretion, City of Bangor may collect a debarment and suspension certification from the prospective third party contractor or include a clause in the third party contract requiring disclosure. Additionally, it shall be the policy of City of Bangor to verify that the prospective third party vendor is not listed as a debarred contractor on the SAM website at SAM.gov. Documentation of SAM searches shall be retained in the permanent history file associated with each procurement.

ARTICLE 7 - COST PRINCIPLES

7-101 Federal Cost Principles for FTA Funded Procurements.

Applicable provisions of 2 CFR Part 200.400 require project costs to conform to applicable Federal cost principles for allowable costs. City of Bangor must follow the cost principles outlined in Title 48 Chapter 1 Subchapter E Part 31. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.

ARTICLE 8 - SUPPLY MANAGEMENT

(RESERVED)

ARTICLE 9 - APPEALS AND REMEDIES

9-101 Bid Protests.

- (1) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Council. Protesters are urged to seek resolution of their complaints initially with the Purchasing Agent. A protest with respect to a request for bids or request for proposals/qualifications shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within five (5) calendar days after such aggrieved person knows of the facts giving rise thereto. The decision of the City Council is final.
- (2) Stay of Procurements During Protests. In the event of a timely protest under Subsection (1) of this Section, the Purchasing Agent shall not proceed further with the solicitation or

award of the contract unless the City Council makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the City.

- (3) Entitlement to Costs. In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

- (4) Protest Procedures for FTA Funded Procurements:

(a) Statement of Policy

City of Bangor is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third party procurements using good administrative practices and sound business judgment.

In general, FTA will not substitute its judgment for that of City of Bangor unless the matter is primarily a Federal concern. Nevertheless, FTA can become involved in City of Bangor administrative decisions when a City of Bangor protest decision is appealed to FTA.

City of Bangor shall give timely notification to FTA when it receives a third party procurement protest and will keep FTA informed about the status of any such protest. City of Bangor shall disclose all information about any third party procurement protest to FTA upon request.

City of Bangor shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$250,000 or greater.

(b) City of Bangor Staff Responsibilities

The following staff responsibilities shall be assigned in all protests:

- Director of Finance – Responsibilities include: ensuring that the City of Bangor Protest Procedure is included in all solicitation documents; and providing information to and assisting Legal Counsel with the resolution of protests.
- Legal Counsel – Responsibilities include: reviewing all procurement protests; and advising and assisting the City of Bangor as needed with the resolution of all procurement protests.

(c) Solicitation Provision

City of Bangor shall insert the following provision in all solicitation documents:

- Pre-Proposal Protests

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Director of Finance as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The Director of Finance may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the Director of Finance as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Director of Finance shall be the final agency decision on the matter but shall be subject to judicial review as set forth by FTA below.

- Pre-Award Protests

With respect to protests made after the deadline for submission of bids/proposals but before contract award by «Dba_Name», protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, «Dba_Name»'s failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Director of Finance as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by City of Bangor.

The Director of Finance may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that City of Bangor shall announce the contract award.

The decision by the Director of Finance shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by FTA as specified below.

(d) Requirements for Protests

All protests must be submitted to City of Bangor in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor, and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by City of Bangor.

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Director of Finance at the address shown in the solicitation documents.

(e) Protest Response

The Director of Finance shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, City of Bangor will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official City of Bangor response to the protest and City of Bangor will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

(f) Review of Protests by FTA

All protests involving contracts financed with Federal assistance shall be disclosed to FTA. Protesters shall exhaust all administrative remedies with City of Bangor prior to pursuing protests with FTA. FTA limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to FTA must be received within five (5) working days of the date the Protester has received actual or constructive notice of City of Bangor final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to FTA.

ARTICLE 10 - COOPERATIVE PURCHASING

10-101 Authority to Join Groups.

- (1) The Purchasing Agent shall have the authority to join cooperative purchasing groups or other units of government in order to purchase goods or services when such action is deemed in the best interest of the City. Authorization and award of purchases made under cooperative purchasing arrangements shall be in accordance with the award requirements cited in Article 3, Source Selection and Contract Formation.
- (2) Piggybacking requirements for FTA funded procurements:
Assignment of Contract Rights ("Piggybacking") – If a recipient of FTA assistance finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to City of Bangor if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. City of Bangor may use contractual rights through assignment from another recipient of FTA assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. City of Bangor need not perform a second price analysis if a price analysis was performed for the original contract; however, City of Bangor must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. City of Bangor shall be responsible for ensuring the

contractor's compliance with FTA's Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, City of Bangor shall review the original contract to ensure that the quantities the assigning recipient acquired, coupled with the quantities that City of Bangor would acquire, do not exceed the amounts available under the assigning recipient's contract and that the required FTA clauses are included.

ARTICLE 11 - ASSISTANCE TO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

- (1) **Disadvantaged Business Enterprises (DBE) FTA Requirements:**
City of Bangor must comply with applicable Federal laws and regulations that provide competitive opportunities for a contractor that qualifies as a disadvantaged business enterprise (DBE), minority owned firm, women's business enterprise, or small business.

FTA desires to make available at least 10 percent of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. City of Bangor assists FTA in meeting this national goal. To receive FTA assistance, City of Bangor must comply with applicable requirements of DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26.

Small and Minority Firms and Women's Business Enterprises

FTA Circular 4220.1F, Chapter IV, Section 2a(6)(b) requires City of Bangor and its subrecipients (if any) to take steps to ensure that it uses small and minority firms and women's business enterprises (irrespective of whether they qualify as DBEs) to the fullest extent practicable.

- (a) Notice – City of Bangor shall make information available to potentially qualified firms about procurement opportunities. City of Bangor shall include these contractors on solicitation lists and request their participation when they are potential sources.
- (b) Contract Size – To foster greater participation of small and minority firms and women's business enterprises, City of Bangor may divide total requirements into smaller tasks or quantities, when economically feasible.
- (c) Delivery Schedule – City of Bangor may specify delivery schedules that encourage their participation.
- (d) Small Business Administration and the Department of Commerce Minority Business Development Agency – City of Bangor may use the services and assistance of the Small Business Administration and the Department of Commerce's Minority Business Development Agency.
- (e) Subcontracting Opportunities – City of Bangor may require its prime third party contractors to include the preceding provisions in FTA assisted subcontracts.

- (f) Prompt Payment – City of Bangor requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

City of Bangor ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

ARTICLE 12 - ETHICS IN PUBLIC CONTRACTING (See also Chapter 33, City of Bangor Ordinance)

Conflicts of Interest for FTA Funded Procurements:

Organizational conflicts of interest may result in bias and potentially provide an unfair competitive advantage to a potential offer or. An organizational conflict of interest occurs due to the type of work to be performed under a third party contract, or because of other activities or relationships such as:

- A contractor is unable, or potentially unable, to render impartial assistance or advice to the City of Bangor.
- A contractor's objectivity in performing contract work is or might otherwise be impaired; or
- A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. City of Bangor will utilize a "Conflict of Interest Disclosure Statement," in its solicitation when contracting for services of this nature.

ARTICLE 13 – COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

13-101 General Provisions

- (1) When procuring goods or services using Community Development Block Grant funding, the City and its subrecipients, must follow federal procurement rules when purchasing services, supplies, materials, or equipment.
- (2) The City must adhere to federal procurement requirements found in 24 CFR Part 85 and as amended. Subrecipients must adhere to federal procurement requirements found in 2 CFR Part 215.44, as implemented through 24 CFR Part 84 and as amended.
- (3) Subrecipients are those entities and individuals receiving loans or grants to fulfill a CDBG national objective using CDBG funding and/or matching funds.

Subrecipients include, but are not limited to, businesses, nonprofit organizations, housing developers and single family home owners. Sub recipients are not required to receive the City's authorization to award contracts using CDBG funding so long as these procurement policies are adhered to and documented.

- (4) There are four categories of procurement pertaining to CDBG funding:
 - (a) Small purchase procedures,
 - (b) Sealed bids,
 - (c) Competitive proposals and
 - (d) Non-competitive proposals.

13-102 Small Purchase Procedures

This category may be used for goods and services totaling no more than \$250,000. The Director of Community & Economic Development, or his/her designee, has authority to award contracts within this category.

- (1) Non Housing Rehabilitation - Under the small purchases method, a request for quotes may be sent to a reasonable number of potential vendors with a detailed description of the goods or services needed. Once three or more competitive written quotations are received from qualified sources, a contract may be awarded to the lowest responsive and responsible source.
- (2) Housing Rehabilitation – Under the small purchases method, a request for quotes shall be sent to a reasonable number of pre-qualified vendors with a detailed description of the goods or services needed. Once three or more competitive written quotations are received from qualified sources, a contract may be awarded to the lowest responsive and responsible source.

13-103 Sealed Bids

- (1) This category may be used for construction contracts and goods totaling over \$250,000. The City Council must approve all contracts within this category.
- (2) Competitive and publicly solicited sealed bids are required for this category. A firm-fixed-price lump sum or unit price contract shall be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. A minimum of two bidders is required.
- (3) The invitation for bids must be publicly advertised in a newspaper of general circulation and a minimum of two bids must be received in order to award the contract. All bids must be opened publicly at the time and place stated in the invitation for bids. The public is allowed at that time to review the bids. All bids may be rejected when sound documented reasons exist.

13-104 Competitive Proposals

- (1) Competitive proposals are used to purchase professional services where the total cost will exceed \$250,000. The Director of Community & Economic Development, or his/her designee, has authority to award contracts within this category.
- (2) Bids may be solicited under this category using two methods:
 - (a) A request for proposals
 - (b) A request for qualifications for architect and engineering services.
- (3) The invitation for bids must be publicly advertised in a newspaper of general circulation and a minimum of two bids/qualifications must be received in order to award the contract.

13-105 Non-Competitive Proposals

- (1) Non-competitive procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:
 - (a) Where the item is available only from a single source;
 - (b) Where a public emergency or urgent situation is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods;
 - (c) Where after solicitation of a number of sources, competition is determined inadequate.

Any contract in excess of \$250,000 must be awarded by the City Council. Contracts under \$250,000 may be awarded by the Director of Community & Economic Development, or his/her designee.

13-106 Ineligible Beneficiaries

- (1) No member of the Bangor City Council, nor any other public official, officer, employee or agent of the City, shall have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.
- (2) No member or delegate to the Congress of the United States, nor any Resident Commissioner, shall be permitted any share or part of the proceeds of this Agreement or any benefit that may arise herefrom.

Article 14 – BUY AMERICA REQUIREMENTS

14-101 Buy America Requirements for FTA Funded Procurements.

- (1) Preference for U.S. Property--Buy America

FTA's "Buy America" regulations apply to procurements in excess of \$150,000 that involve the purchase of iron, steel, manufactured goods, or rolling stock to be delivered to City of Bangor under the third party contract for incorporation into the FTA project.

- (2) Any construction contract exceeding \$150,000 entered into by City of Bangor with FTA assistance shall include provisions that require the third party contractor to provide property produced or manufactured in the United States for use in the construction project that the recipient acquires, unless FTA has granted a waiver authorized by those regulations. FTA cautions that its Buy America regulations are complex and different from the Federal "Buy American Act" regulations in FAR Subparts 25.1 and 25.2.
- (3) Property that the contractor acquires to perform its construction activities for the recipient, such as tools, machinery, and other equipment or facilities, is not covered by FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, City of Bangor may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether that property would comply with FTA's Buy America regulations.

Appendix A

FTA Funded Procurement DETERMINATION OF RESPONSIBILITY FORM & CHECKLIST

Solicitation Title & Number: _____

Name of Proposer: _____

Determined by: _____

For each of the areas described below, check that the appropriate proof has been provided and that supporting documentation is included.

Yes **No** Proposer has sufficient staff/resources (project team, support staff and backup resources) to do the work. *(Attach supporting memorandum, organization charts, etc. Or list the page # in the Bid)*

Yes **No** Proposer has sufficient financial resources to complete the work. *(Attach supporting memorandum, financial statements, bank references, etc. list the page # in the Bid)*

Yes **No** Proposer has a proven track record of completing work on time and within budget. *(Attach supporting memorandum, references, etc. Or list the page # in the Bid)*

Yes **No** Proposer can provide the required bonds (if applicable). *(Attach supporting memorandum, confirmation of bonding capacity, etc. or list the page # in the Bid)*

Yes **No** Proposer is not debarred/suspended at federal or (if available) state level *(Attach supporting memorandum, SAM.GOV screenshot, state screenshot, etc.)*

Based upon the above information, I have determined that _____ is a responsible contractor for this procurement. *This form should be retained and filed as part of the procurement history.*

Signature _____ Name: _____

Title _____ Date _____



CITY OF BANGOR
FTA Funded Procurement
RESPONSIVENESS DETERMINATION CHECKLIST

This checklist will be used by City of Bangor staff to determine a Proposer’s responsiveness.

Proposer Name: _____

Solicitation Name & Number: _____

REQUIREMENT	YES	NO	COMMENTS
Bid received on time per submission requirements.			
Price proposal provided separately. (A&E only)			
All items priced clearly using measurements specified.			
All items in Section X included (e.g. qualifications, proposer experience and project understanding, etc.)			
Signature of Page Form signed and attached.			
Lobbying Certification signed and attached.			
Debarment and Suspension Form signed and attached.			
DBE Documentation included and complete.			
Acknowledgements of Amendments signed and attached (if applicable).			
Insurance documentation included.			
No exceptions to terms or other solicitation language.			
Bid Security Received (\$___) (if applicable)			
Other:			
Other:			
Other:			
Other:			

Based upon the above information, I have determined that _____ is a responsible contractor for this procurement.

Signature: _____ Name: _____

Title: _____ Date: _____



CITY OF BANGOR

Procedures for conducting Pre-Award and Post Delivery Review and Inspection of Revenue Service Rolling Stock

For Reference: Federal Transit Administration (FTA) regulations are 49 CFR Part 661 Buy America requirements and 49 CFR Part 663 – Pre-award and Post Delivery Audits of Rolling Stock Purchases. Rolling Stock procurement means used in revenue service, which includes, bus, vans, cars, rail cars, locomotives, trolley cars, trolley buses, ferry boats, and vehicles intended for public transportation of passengers.

-
- 1.0 City Staff will follow the FTA handbook for “Conducting Pre-Award and Post-Delivery Audits for Rolling Stock.”
 - 1.1 When training is available, relevant City Staff will make an effort to attend and remain up-to-date.
 - 2.0 The person conducting the audit can be internal and or third party, but must be qualified and independent from the manufacturer.
 - 3.0 The Pre-Award must be completed before a contract is awarded and the Post-Delivery audit needs to be completed before the title of the vehicle is transferred.
 - 4.0 During the Solicitation Phase of the Procurement – the City of Bangor will highlight the important Buy America requirements and identify specific Buy America related documentation that the manufacturers will be expected to include in their bids or at the pre-award and or post delivery audit phase. Forms will be provided when necessary.
 - 5.0 Requirements for the Pre-Award Audit: *(Timeline after bids are received but before contract is issued)*
 - 5.1 Pre-Award Buy America Certification or Non-Certification.
 - 5.2 Pre-Award Purchaser’s Requirement Certification (can manufacturer build what is in the solicitation or does the dealer have what is in the solicitation)
 - 5.3 Pre-Award Certification of Compliance with or Inapplicability of Federal Motor Vehicle Safety Standards (FMVSS)
 - 6.0 Buy America Audits are for rolling stock > \$150,000, unless a waiver is received from FTA.
 - 6.1 Verifying the components and subcomponent parts are 70% domestic content.
 - 6.2 The final assembly of the vehicles MUST take place in the United States.
 - 7.0 The City of Bangor will use a third-party auditor for both Buy America Pre-Award and Post-Delivery Audits when purchasing rolling stock buses when the vehicles are built.

The inspector will produce a report for all of #2 above and #10 below. When both reports are received, they must be signed and filed as documentation of both requirements.

- 8.0 The City of Bangor will use internal staff when purchasing ADA minivans from a dealer selling the minivans but did not build them. For such procurements, only visual inspections and road testing upon delivery will be performed by City Staff. City Staff will document the Pre-Award and Post-Delivery audits for ADA vans purchased from a dealer of modified minivans.
- 9.0 During the build process at the factory the third-party inspector/auditor will be on site while the rolling stock is being built. The Bus Superintendent and Fleet Maintenance Director, or designees, for the City of Bangor will be on site for final inspection, if not before. City Staff will sign to except the rolling stock for delivery. If City Staff is not available to sign the third-party inspector will sign with City Staff's permission.
- 10.0 Post-Delivery timeline is after rolling stock is delivered, but before the title is transferred or rolling stock is put into revenue service whatever comes first. The purpose of post-delivery audit is verified that the built vehicle(s) comply with Buy America requirements, meets the City of Bangor solicitation specification requirements, and FMVSS.
- 11.0 Requirements for the Post-Delivery Audit:
 - 11.1 Post-Delivery Buy America Certification
 - 11.2 Post Delivery Purchaser's Requirements Certification (Was the rolling stock built to City of Bangor specs -see finally inspection and inspectors report, etc.)
 - 11.3 Post Delivery Certification of FMVSS Compliance or Inapplicability



CITY OF BANGOR

A.2 Pre-Award Checklists

A.2.1 Recipient at Pre-Award Audit

Pre-Award Audit (Before signing Contract with Bidder)	Buy America Certification
	A. <input type="checkbox"/> Reviewed and Verified Minimum Domestic Content; AND <input type="checkbox"/> Reviewed and Verified Proposed U.S. Final Assembly, Location, Operations, and Total Cost OR B. <input type="checkbox"/> Requested and Received Buy America Waiver
	Purchaser's Requirements Certification
	A. <input type="checkbox"/> Checked Bid Specification Compliance with Solicitation Specifications; AND <input type="checkbox"/> Completed a Manufacturer Capability and Capacity Review
	FMVSS Certifications (IF APPLICABLE): Requested and Received Manufacturer's letter stating:
	A. <input type="checkbox"/> The information to be included on the FMVSS Stickers OR B. <input type="checkbox"/> The Vehicles Are Not Subject to FMVSS

A.2.2 Manufacturer at Pre-Award Audit

Pre-Award Audit (Before signing Contract with Bidder)	Buy America Certification
	A. <input type="checkbox"/> Prepared and provided to recipient documentation, including but not limited to, documentation from suppliers sufficient for recipient to verify domestic content of vehicle; AND <input type="checkbox"/> Provided documentation of U.S. Final Assembly, Location, Operations, and Total Cost OR B. <input type="checkbox"/> Submitted a Buy America Waiver
	Purchaser's Requirements Certification
	A. <input type="checkbox"/> Responded to recipient solicitation clearly indicating Bid Specification Compliance with Solicitation Specifications; AND <input type="checkbox"/> Responded to sections in the Solicitation regarding Manufacturer Capability and Capacity Review
	FMVSS Certifications (IF APPLICABLE): Prepared letter stating:
	A. <input type="checkbox"/> The information to be included on the FMVSS Stickers OR B. <input type="checkbox"/> The Vehicles Are Not Subject to FMVSS



CITY OF BANGOR

Comparison of Manufacturer's Specification with Purchaser's Solicitation Specification

As part of the Pre-award Purchaser's Requirements Certification process, the recipient shall verify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification. The following items would typically be considered for this review.

Please update this list to the items on your solicitation.

	Solicitation Specification Item	Remark	Manufacturer's Specification Complies?
1.	Carbody: structure, high/low boarding, diaphragm		<input type="checkbox"/>
2.	Windows: windshield, passenger side windows, emergency windows, door windows, sliding sash		<input type="checkbox"/>
3.	Interior: flooring, seats, wheelchair securement, bicycle storage, luggage racks, exit path marking (as applicable)		<input type="checkbox"/>
4.	Trucks/axles, sanding equipment (if required)		<input type="checkbox"/>
5.	Propulsion equipment		<input type="checkbox"/>
6.	Brake equipment; wheel slip/slide, parking brake		<input type="checkbox"/>
7.	Auxiliary electrical equipment		<input type="checkbox"/>
8.	Cab/driver's area controls and equipment		<input type="checkbox"/>
9.	HVAC		<input type="checkbox"/>
10.	Doors and door control system with ADA audible alarm and warning lights		<input type="checkbox"/>
11.	Lighting: interior, emergency, exterior		<input type="checkbox"/>
12.	Communications		<input type="checkbox"/>
13.	Toilet room; water and waste system (if required)		<input type="checkbox"/>
14.	Coupler/draft gear (rail vehicles only)		<input type="checkbox"/>
15.	Intercar trainlines/receptacles (rail vehicles only)		<input type="checkbox"/>
16.	Train control/cab signal equipment (rail vehicles only)		<input type="checkbox"/>
17.	Monitoring and diagnostics		<input type="checkbox"/>
18.	Materials and workmanship standards		<input type="checkbox"/>
19.	Software		<input type="checkbox"/>
20.	Manuals and training		<input type="checkbox"/>
Other Provisions			
21.	Compliance with applicable Federal, State, local regulations		<input type="checkbox"/>
22.	Buy America		<input type="checkbox"/>
23.	Warranty terms		<input type="checkbox"/>
Reviewed and accepted by:			
Signature			Date
Title			



CITY OF BANGOR

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by 49 CFR part 663 – Subpart D, _____

(the recipient) certifies that it received, at the pre-award stage, a copy of

_____’s (the manufacturer) self-certification

information stating that the vehicles, _____

(number and description of vehicles), will comply with the relevant Federal Motor Vehicle

Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part

571.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____



CITY OF BANGOR

A.3 Post-Delivery Checklists

A.3.1 Recipient at Post-Delivery Audit

Post-Delivery Audit (Before using the Rolling Stock in Transit Service or Before Transfer of Title, Whichever Occurs First)	Buy America Certification
	A. <input type="checkbox"/> Reviewed and Verified the amount of Domestic Content; AND <input type="checkbox"/> Reviewed and Verified Proposed U.S. Final Assembly, Location, Operations, and Total Cost OR B. <input type="checkbox"/> Requested and Received Buy America Waiver
	Purchaser's Requirements Certification
	A. For Procurements of Rail Vehicles and More than 10 Buses or Modified Vans (and More than 20 Buses in Rural Areas and Small UZAs) <input type="checkbox"/> Completed Resident Inspector's Report; AND <input type="checkbox"/> Completed Visual Inspections and Road Tests OR B. For Procurement of 10 or Fewer Buses or Modified Vans, any Number of Unmodified Vans, and 20 or Fewer Buses in Rural Areas and Small UZAs <input type="checkbox"/> Completed Visual Inspection and Road Test
	FMVSS Certifications (IF APPLICABLE)
	A. <input type="checkbox"/> Verified FMVSS Sticker is Affixed to Each Vehicle OR B. <input type="checkbox"/> Requested and Received Manufacturer's Letter Stating that the Vehicles Are Not Subject to FMVSS.

A.3.2 Manufacturer at Post-Delivery Audit

Post-Delivery Audit (Before using the Rolling Stock in Transit Service or Before Transfer of Title, Whichever Occurs First)	Buy America Certification
	A. <input type="checkbox"/> Prepared and provided to the recipient the Domestic Content Worksheet based on actual cost; AND <input type="checkbox"/> Provide actual U.S. Final Assembly Total Cost OR B. <input type="checkbox"/> Submitted a Buy America Waiver prior to award
	Purchaser's Requirements Certification
	C. <input type="checkbox"/> Completed Visual Inspections and Road Tests and Provide reports to the Resident Inspector.
	FMVSS Certifications (IF APPLICABLE)
	C. <input type="checkbox"/> Affixed FMVSS Stickers to Each Vehicle OR D. <input type="checkbox"/> Provided letter stating that the Vehicles Are Not Subject to FMVSS.



CITY OF BANGOR

Post-Delivery Purchaser's Requirements Certification for Modified Vans

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION

As required by 49 CFR part 663 – Subpart C, after visually inspecting and road testing the contract vehicles, _____ (the recipient) certifies that the vehicles, _____ (number and description of vehicles) from _____ (the manufacturer), meet the contract specifications.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____



CITY OF BANGOR

POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION

As required by 49 CFR part 663 – Subpart D, _____

(the recipient) certifies that it received, at the post-delivery stage, a copy of

_____ 's (the manufacturer) self-certification

information stating that the vehicles, _____

(number and description of vehicles), comply with the relevant Federal Motor Vehicle Safety

Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____